



## U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

April 19, 2021

The Government's time to respond to the Complaint is extended 45 days, from April 22, 2021 to June 7, 2021.

**VIA ECF**

Hon. Paul G. Gardephe  
United States District Judge  
United States District Court  
40 Foley Square  
New York, NY 10007

SO ORDERED.

Re: *Next Generation Technology, Inc., et al., v. 1*

Paul G. Gardephe  
United States District Judge  
Dated: April 20, 2021

Dear Judge Gardephe:

This Office represents defendants (collectively, the “government”) in the above referenced matter in which plaintiffs request injunctive and declaratory relief relating to H-1B non-immigration visa petitions that were revoked and denied. The government writes to respectfully request a sixty-day extension of the deadline for the government to respond to the Complaint, *i.e.*, from the current deadline of April 22, 2021 to June 21, 2021. This is the government’s first request for an extension of time to respond to the Complaint.

By way of background, in 2009 and 2010 plaintiff Next Generation Technology, Inc. (“Next Generation”) filed three different petitions for a nonimmigrant worker, Form I-129, each seeking to classify the beneficiary, plaintiff Puspita Deo, as a H-1B temporary employee. On June 27, 2009, U.S. Citizenship and Immigration Services (“USCIS”) approved the initial petition with validity dates from October 1, 2009 to September 28, 2012, but on November 24, 2009, the beneficiary opted to enter the U.S. under a B-2 tourist visa, and there is no evidence that the beneficiary ever obtained H-1B status. On March 2, 2010, Next Generation filed a second petition (“Second Petition”) on behalf of the beneficiary, checking the box marked “amend the stay of the person(s) since they now hold this status.” USCIS denied the Second Petition as it was subject to additional fees. In July 2010, Next Generation filed a third H-1B petition (“Second Amended Petition”) which was marked “change the person(s)’ status and extend their stay since the persons(s) are all now in U.S. in another status.” While the Second Amended Petition was pending, USCIS issued a notice of intent to revoke the initial approved petition, and after considering plaintiffs’ response, USCIS revoked the Initial Petition on November 30, 2010. And in December 2010, USCIS denied the Second Amended Petition. On December 17, 2010, Next Generation filed an appeal to the Administrative Appeals Office (“AAO”) based on the revocation of the Initial Petition, and the AAO dismissed the appeal and found the petition should remain revoked on November 3, 2012. Next Generation then filed a Motion to Reopen and a Motion to Reconsider the decision of the AAO as erroneous in matters of fact and law, and on October 14, 2014, the AAO dismissed the Motion to Reopen and Motion to Reconsider finding that the petition’s approval should remain revoked.

Plaintiffs then filed a complaint in this District in 2015 seeking the review of the agency's decisions under the Administrative Procedure Act. In *Next Generation Tech., Inc. v. Johnson*, 328 F. Supp. 3d 252 (S.D.N.Y. 2017), Judge Freeman granted the plaintiffs' motion for summary judgment in part, and remanded to the AAO for reconsideration of the revocation of the Initial Petition and denial of the Second Amended Petition. The AAO issued a decision on July 31, 2019 ("2019 AAO Decision"). In the present action, the plaintiffs challenge the 2019 AAO Decision as arbitrary and capricious, not in accordance with the law, and outside the scope of the remand. Among other things, the Complaint requests a declaration that the revocation of the Initial Petition and denial of the Second Amended Petition was unlawful, and an order that the government reinstate plaintiff Deo in H-1B status.

The requested sixty-day extension is necessary because the government needs additional time to consult with agency counsel to determine how to proceed in this case, particularly given its lengthy and complicated procedural history, in light of recent USCIS guidance and in light of plaintiff Next Generation's April 6, 2021 withdrawal of its motion to reopen/reconsider the 2019 AAO Decision. Specifically, based on guidance that has come out since the 2019 AAO Decision,<sup>1</sup> if the case were currently before the AAO, the AAO would likely withdraw or modify specific grounds that were in the 2019 AAO Decision, which could include the computer programmer/specialty occupation ground. The government needs additional time to determine what grounds from the 2019 AAO Decision, if any, it will no longer be defending in light of the new agency guidance, as well as whether a different or modified result might be warranted. After the filing of this Complaint, Next Generation had filed a motion to reopen and a motion to reconsider the 2019 AAO Decision, which the government received in March 2021. A decision by the AAO on that appeal would have resolved issues related to the changed guidance. However, on April 6, 2021, Next Generation withdrew the motion to reopen and reconsider.<sup>2</sup> Therefore, the government needs additional time to consult with agency counsel in light of these recent developments and the effect of the new guidance on the government's defense of the 2019 AAO Decision. The additional time is thus sought, not for purposes of delay, but to ensure that the case reflects the agency's most recent guidance—*i.e.*, has been properly adjudicated.

Plaintiffs do not consent to the government's request for a 60-day extension, but have agreed to a three-week extension until May 13, 2021. Plaintiffs' counsel explained the reason for their lack of consent is: "The reason is my client has been waiting since 2009 for a fair decision on H-1B," noting that the "client has been inconvenienced for many years due to undue delays in adjudication and mis-adjudication."

For the same reasons as discussed above, the government respectfully requests that the Court adjourn the initial pretrial conference presently scheduled for May 20, 2021 at 10:15 a.m., to a date at least two week after June 21, 2021, and that the deadline for the parties to submit their joint letter and jointly proposed Case Management Plan be similarly extended. This is the

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<sup>1</sup> <https://www.uscis.gov/news/alerts/uscis-may-reopen-h-1b-petitions-denied-under-three-rescinded-policy-memos>

<sup>2</sup> Although Next Generation withdrew the motion, it still has the option to file another motion to reopen. And in the interest of potential resolution of this case, USCIS has agreed to waive the filing of the motion to reopen requirement that there be time remaining on the validity period requested on the petition or labor condition application.

government's first request to adjourn the conference. Plaintiffs do not consent to this request. Plaintiffs declined to consent to adjourn the conference for the same reasons as they declined to extend the deadline for the government to respond for sixty-days.

I thank the Court for its consideration of these requests.

Respectfully,

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United States Attorney

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cc: Counsel of Record (via ECF)